IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BAUHAUS USA, INC.,

Plaintiff,

v. NO. 1:00CV212-S-D

LILLIE REGINA HOLMES COPELAND, et al.,

Defendants.

OPINION

In this case, plaintiff, an ERISA fiduciary, seeks a declaration that it is entitled to $46,229.45 from settlement proceeds currently held by the Chancery Court of Lee County, Mississippi. That sum, tendered by the Canal Insurance defendants (James P. Davis, James M. Newman d/b/a Newman Trucking, and Canal Insurance Company), represents plaintiff's subrogation claim in connection with benefits it paid after the minor child of one of its participants was injured in an automobile accident. Except for determination of the subrogation claims, the state court case has been settled, and the settlement approved by the chancellor in all other respects. Presently before the court are the separate motions to dismiss of the Canal Insurance defendants, who have been fully and finally discharged by the chancery court, and of the Holmes defendants (Lillie Regina Holmes Copeland as natural guardian and next friend of Reshan Holmes and Reshan Holmes, a minor).

No one seriously disputes that the plan at issue is one governed by ERISA. Rather, at the heart of this case is the question of whether ERISA preempts the right of the state court to control the affairs of minors. If it does not, then the chancery court has jurisdiction to determine whether,

under the "made whole" doctrine, plaintiff's subrogation claim should be extinguished or reduced. *See Hare v. State*, 733 So.2d 277, 283 ("made whole" rule cannot be overridden by contract language of insurance policy permitting complete subrogation). Otherwise, it would be for this court to determine the parties' rights under the terms of the plan.

The court could engage in a lengthy analysis on the preemption question presented here, but, after careful consideration, the court finds that *Clardy v. Ats, Inc. Employee Welfare Benefit Plan*, 921 F. Supp. 394 (N.D. Miss. 1996) (Davidson, J.), ably resolves this matter. In that case, the parents of the minor child signed a reimbursement agreement with the plan which was not signed by the minor or on his behalf with chancery court approval. *Clardy*, 921 F. Supp. at 395-96. After extensive consideration of the competing interests of protecting areas of traditional state concern and maintaining a uniform legal scheme for the enforcement of ERISA, the court found that the rule of Mississippi law which requires chancery court approval assigning a minor's rights to insurance proceeds is not preempted by ERISA. *Id.* at 398-99.

Though the posture of *Clardy* differs from that of the instant case (*Clardy* was removed on the basis of federal question after plaintiffs filed suit to recover medical expenses under the plan), the court does not believe the difference is significant as the goal of the plan in both instances is identical, i.e., "preserving maximum subrogation rights on behalf of a plan or administrator...." *Id*. at 398. This court is in accord with Judge Davidson's conclusion that

> the state law under consideration...does not prevent subrogation of claims, nor does it even directly address the matter of subrogation. The administration of a minor's estate is entirely a matter of state law, and is law of general application which affects a broad range of matters entirely unrelated to ERISA plans....The [plan] in this case would have this court preempt not a state law which impinges upon contractual subrogation rights under ERISA, but a state law of general application which has only an incidental effect upon an ERISA plan. The state law in question...relates to ERISA

in "too tenuous, remote, or peripheral a manner" to be preempted in this case. *Id*. at 399. *See also In re Estate of Ashmore*, No.1:97CV177-B-D, 1998 WL 211778 (N.D. Miss. Mar. 25, 1998) (though plan was governed by ERISA, validity and extent of subrogation lien not preempted under *Clardy*).

Therefore, because plaintiff is not entitled to a declaration from this court that its entire subrogation claim is valid and enforceable, that matter not having been completely preempted by ERISA, the motions of defendants to dismiss are granted. An appropriate order and final judgment shall issue.

This _____ day of March, 2001.

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SENIOR JUDGE